

The Matter of the Impasse Between

)	FACTFINDING REPORT
County of Fresno)	AND RECOMMENDED
)	TERMS OF SETTLEMENT
and)	
)	
The Association of County Engineers)	
)	
)	
)	PERB CASE #SA-IM-146-M
)	REPORT ISSUED
)	January 8, 2015

Hearing Held on December 11, 2014

COMPOSITION OF THE FACTFINDING PANEL

Impartial Chairperson: **John G. Moseley**
Fact-finder
36835 Lexington Avenue
Madera, CA 93636-8212

County Member: **Catherine E. Basham**
Senior Deputy County Counsel
Office of the County Counsel
2220 Tulare Street, Suite 500
Fresno, California 93721

Association of County Engineers:
Gene Zimmerman
1407 West Holland AV
Fresno, California 93705

MAKING PRESENTATIONS TO THE FACTFINDING PANEL:

For the County: **Evan A. Merat**
 Deputy County Counsel
 2220 Tulare Street, Suite 500
 Fresno, California 93721

For the Association: **Thomas M. Sharpe, Attorney at Law**
 Bennett & Sharpe, Inc.
 2444 Main Street, Suite 110
 Fresno, California 93721

HISTORY OF NEGOTIATIONS

The Association of County Engineers, (ACE), began negotiations in April of 2014 with the County of Fresno, (the County). In July of 2014, impasse was reached between ACE and the County of Fresno over salary for the 2014-2015 fiscal year. ACE and the County of Fresno then entered into mediation with a State Mediator, which was unsuccessful. On October 27, 2014, I was assigned as the fact-finder in this matter by the Public Employment Relations Board, (PERB).

Both ACE and the County of Fresno representatives stated that originally there were other issues in dispute, but that they had been resolved and the fact-finding panel was to deal solely with the issue of salary for members of ACE for the 2014-2015 fiscal year.

RELEVANT FACTORS

California Government Code

3505.4. (a) The employee organization may request that the parties' differences be submitted to a factfinding panel not sooner than 30 days, but not more than 45 days, following the appointment or selection of a mediator pursuant to the parties' agreement to mediate or a mediation process required by a public agency's local rules. If the dispute was not submitted to mediation, an employee organization may request that the parties' differences be submitted to a factfinding panel not later than 30 days following the date that either party provided the other with a written notice of a declaration of impasse. Within five days after receipt of the written request, each party shall select a person to serve as its member of the factfinding panel. The Public Employment Relations Board shall, within five days after the selection of panel members by the parties, select a chairperson of the factfinding panel.

(b) Within five days after the board selects a chairperson of the factfinding panel, the parties may mutually agree upon a person to serve as chairperson in lieu of the person selected by the board.

(c) The panel shall, within 10 days after its appointment, meet with the parties or their representatives, either jointly or separately, and may make inquiries and investigations, hold hearings, and take any other steps it deems appropriate. For the purpose of the hearings, investigations, and inquiries, the panel shall have the power to issue subpoenas requiring the attendance and testimony of witnesses and the production of evidence. Any state agency, as defined in Section 11000, the California State University, or any political subdivision of the state, including any board of education, shall furnish the panel, upon its request, with all records, papers, and information in their possession relating to any matter under investigation by or in issue before the panel.

(d) In arriving at their findings and recommendations, the factfinders shall consider, weigh, and be guided by all the following criteria:

- (1) State and federal laws that are applicable to the employer.
- (2) Local rules, regulations, or ordinances.
- (3) Stipulations of the parties.
- (4) The interests and welfare of the public and the financial ability of the public agency.
- (5) Comparison of the wages, hours, and conditions of employment of the employees involved in the factfinding proceeding with the wages, hours, and conditions of employment of other employees performing similar services in comparable public agencies.
- (6) The consumer price index for goods and services, commonly known as the cost of living.
- (7) The overall compensation presently received by the employees, including direct wage compensation, vacations, holidays, and other excused time, insurance and pensions, medical and hospitalization benefits, the continuity and stability of employment, and all other benefits received.
- (8) Any other facts, not confined to those specified in paragraphs (1) to (7), inclusive, which are normally or traditionally taken into consideration in making the findings and recommendations.

(e) The procedural right of an employee organization to request a factfinding panel cannot be expressly or voluntarily waived.

AGREED TO STIPULATIONS

1. ACE and the County agreed that the County was not going to raise the issue of inability to pay, that the County had sufficient funds to meet the demand and that meeting that demand would not put the County at financial risk.
2. The County representative agreed that the Association would establish the issue(s) that the fact-finding panel would rule upon.
3. The panel was limited to ruling on the issue of a salary increase for ACE for the 2014-2015 fiscal year.

ISSUE(S)

The issue before the panel as stated by Mr. Sharpe, ACE representative, is whether the members of ACE should have the 6.5 % reduction they took in their 2011 salary reinstated to their salary schedule effective during the 2014-2015 fiscal year. Mr. Sharpe's proposal was for a 4% reinstatement effective August 4, 2014, and a 2.5% reinstatement effective July 6, 2015.

RELAVENT FACTS FROM THE HEARING

After receiving my appointment to the Fact-finding Panel by PERB on October 27, 2014, I had both phone conversations and e-mail conversations with representatives for both parties, Mr. Merat, and Mr. Sharpe. We discussed the

issues and how the hearing itself, would be conducted. We set December 11, 2014 for the hearing.

On December 11, 2014 at 9:00AM, the formal fact-finding hearing was conducted in the County Offices at 2220 Tulare Street, Fresno, CA. 93721. Mr. Evan Merat, was the presenter for the County of Fresno, and Mr. Thomas Sharpe was the presenter for ACE. The Fact-finding Panel consisted of Ms. Catherine E. Basham, Senior Deputy County Counsel for the County of Fresno, Mr. Gene Zimmerman for the Association of County Engineers, and John Moseley as the panel chairperson.

While both ACE and the County of Fresno's Representatives put on evidence concerning the County's budgetary health, showing it to be in excellent fiscal shape, this is not an issue for the panel or the chairperson to rule upon. The stipulations are clear the County can afford the 6.5% increase that is being requested by ACE for the 2014-2015 fiscal year.

The Association, being the moving party for fact-finding, presented their case first. The Association stated that during the 2011 negotiations, the County requested that ACE take a 6.5% reduction in its salary schedule as a way to help the County weather what was then, difficult financial times. The Association President at that time was Mr. James Garcia. He stated that the County Representative at the time had implied that ACE would be taken care of later,

when financial times got better. Mr. Garcia could not recall his exact words, but was very clear that a commitment had been made to make them whole in the future.

The Fresno County representative, Mr. Evan Merat, stated that the County believed that its salary offer 1.75% was fair, and that the County had learned its lesson and did not want multiple year contracts, it agreed with the Association that this was a one year contract and that the panel was to rule on the salary for the 2014-2015 fiscal year. Mr. Merat did not raise the defense of an inability of the County to pay the 6.5% increase in 2014-2015 fiscal year, but stipulated that they had the money to meet the request.

CONCLUSION

1. Fresno County has the funds and ability to meet ACE's request for a salary increase of 6.5% in the 2014-2015 fiscal year.

RECOMMENDATIONS

1. The Association of County Engineers shall receive an across the board increase in their salary schedule of 4% effective and retroactive to August 4, 2014, and an additional 2.5% effective July 6, 2015.

SIGNATURE PAGE

Association Panel Member
Concur _____ Dissent _____

_____ Attached Statement

County Panel Member
Concur _____ Dissent _____

_____ Attached Statement

Mr. Gene Zimmerman

Ms. Catherine E. Basham
Senior Deputy County Counsel

Panel Chair



Mr. John G. Moseley
Fact-finder

SIGNATURE PAGE

Association Panel Member

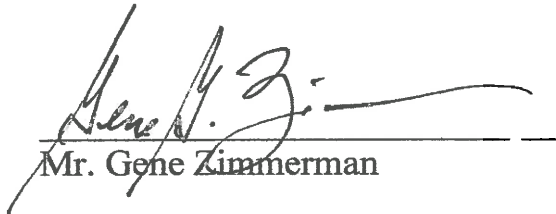
Concur ☒ Dissent _____

_____ Attached Statement

County Panel Member

Concur _____ Dissent _____

_____ Attached Statement



Mr. Gene Zimmerman

Ms. Catherine E. Basham
Senior Deputy County Counsel

Panel Chair

Mr. John G. Moseley
Fact-finder

SIGNATURE PAGE


Association Panel Member
Concur _____ Dissent _____

_____ Attached Statement

County Panel Member
Concur _____ Dissent X

X Attached Statement

Mr. Gene Zimmerman



Ms. Catherine E. Basham
Senior Deputy County Counsel

Panel Chair

Mr. John G. Moseley
Fact-finder

Fresno County and the Association of County Engineers (ACE)

Case No. SA-IM-146-M

DISSENT OF FRESNO COUNTY'S REPRESENTATIVE TO FACTFINDING PANEL,

CATHERINE E. BASHAM

As the representative for Fresno County (County) to the Factfinding Panel, I find it necessary to dissent from the recommendations of the Panel Chair which appear to be based solely on a conclusion that the County has the ability to pay for the requested salary increase. I believe that a review of the remaining criteria this panel is required to consider by Government Code section 3505.4(d) supports a different conclusion.

1. Gov. code section 3505.4(d)(4) requires a review not only of the financial ability of the public agency but of the interests and welfare of the public. Gilbert de la Torre, Sr. Personnel Analyst, testified that the County wanted to both increase salaries and restore staffing levels so that services to the public could be restored after the furloughs and staff reductions that occurred over the past several years. The County also needed to put money aside to deal with potential financial liabilities such as a lawsuit concerning the jail. Lemuel Asprec, Business Manager for Public Works and Planning, testified that there is currently \$0.5 Billion in deferred road maintenance and this amount is expected to increase exponentially over time. An increase in salary for ACE members would negatively impact the County's ability to pay for this deferred road maintenance. Further, while the County did not claim an inability to pay the requested increase, there was no evidence to support the Panel Chair's statement that the County is in "excellent fiscal shape."
2. Gov. Code section 3505.4(d)(5) requires a comparison of the wages of ACE members and those holding similar jobs in other public agencies. Both ACE and the County provided salary surveys that had different numbers: ACE concluded that the County's engineers were 6.71% behind those in other entities and the County concluded, using the same entities, that it was only 3.01% below the average. The County explained in its Exhibit 11 the reasons for the differences and the errors made by ACE. With the correct numbers provided by the County, the top salary for ACE members was 2.84% above the average for surrounding counties (those to which someone could reasonably commute) and 0.66% above the average for all surrounding public agencies, including CalTrans and the cities of Clovis, Hanford and Fresno. Further, the Building Plans Checkers in ACE enjoy a maximum salary that is 35.07% above the average in the surrounding counties for the employees

performing the same duties. Clearly, this information does not support an increase of 6.5% for ACE's members.

3. Gov. Code section 3505.4(d)(7) requires a review of the overall compensation presently received by ACE members. The County's Exhibit 8 set forth the retirement and other benefits received by ACE members. Sr. Personnel Analyst DeAnn VonBerg testified that the County's annual leave rates are much more liberal than in the private sector and retirement tiers I and II (where most ACE members are placed) are among the most generous.
4. Gov. Code section 3505.4(d)(8) provides for a review of any other relevant facts. The County's Exhibit 9 demonstrates that there is no recruitment issue for the positions in the Engineer series or the Building Plans Checker series. Further, the average years of county service for ACE members (11.07) is comparable to County employees as a whole (11.2) so there is no evidence of a retention issue for these classifications. Both parties provided a comparison of the salary increases and decreases for Fresno County employees since 2005. (Ex. 5) This table shows that ACE members have received a cumulative 16.25% increase since 2005, placing them in the upper half of a range from 5.49% (Department Heads) to 21.5% (Unit 1).

A review of all the criteria to be considered supports the County's proposal of a 1.75% increase.

At the hearing, former ACE President James Garcia testified that during 2011, former County Labor Relations Manager John Pinheiro made vague assurances that when the economy improved, the County would take into account the fact that ACE had agreed to concessions. Mr. Garcia acknowledged that Mr. Pinheiro did not elaborate on what he meant by this but Mr. Garcia understood this to mean ACE members would receive more favorable treatment in the future when more money was available. Sr. Personnel Analyst Gilbert de la Torre testified that he participated in the 2011 negotiations and Mr. Pinheiro made no promises or guarantees to return the reductions at any point in the future. Instead, Mr. Pinheiro stated that the County hoped the economy would improve so there would not have to be further concessions and they could begin to build back up gradually, noting "Rome was not built in a day." This evidence does not support the recommendation for a total increase of 6.5% within one year.

With regard to the term of the agreement, both parties conceptually agreed to a one year term. The County's LBFO was for a one year term which would begin the first pay period after approval of the MOU by the Board of Supervisors. ACE's LBFO was for a one year term beginning August 4, 2014 or the first pay period following the approval of the Board of Supervisors. Given this agreement to begin the term following

the approval by the Board of Supervisors, there is no support for the Panel Chair's recommendation of a retroactive salary increase effective August 4, 2014.

It should also be noted that the parties stipulated that the Panel was limited to ruling on the issue of a salary increase for ACE for the 2014-15 fiscal year. However, the Panel Chair recommends a second salary increase of 2.5% to be effective July 6, 2015. Such an increase would occur in fiscal year 2015-16.

Dated: January 13, 2015

A handwritten signature in cursive script, reading "Catherine E. Basham", written over a horizontal line.

Catherine E. Basham
Fresno County's Panel Member